IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.518 OF 2006

Kishore Ashu Shivdasani .. Appellant

versus

Vijay Ashu Shivdasani & Anr. .. Respondents

...

Mr.Rajendra Desai with Sheetal Angre i/b Divya Shah & Associates for the appellant.

Respondent present in person.

CORAM : D.G. KARNIK, J

DATED : 18th August 2006.

P.C.:

1. This appeal is directed against an order dated 30th June 2006 passed by the learned Judge of the City Civil Court dismissing the motion no.1889 of 2006 in Suit no.2085 of 2006.

2. The appellant and respondent are brothers and are co-owners of the suit flat. Both the parties occupy the suit flat jointly and for the sake of convenience the appear to have made some internal arrangement for exclusive occupation of different parts of the flat by each of them. It appears that there are disputes between the parties regarding the sharing of the electricity bills. According to the appellant-plaintiff, he alone is paying the electricity bills and the respondent defendant is not sharing it. The defendant no.1 who is personally present in the court denies this. He sought to tender receipts to show that he is been contributing to the electricity bills. It is not necessary to go through them. Suffice it to say that whether the appellant is paying all electricity bills is a disputed question of fact.

3. The plaintiff has filed the suit not for partition but for an injunction restraining the defendant no.1 from receiving electric supply from the meter. Admittedly, the flat is jointly owned and the electricity connection is jointly jointly owned as inheritance from their father. In the circumstances, the defendant cannot be prevented from receiving the electricity through the common meter. The proper

remedy for the plaintiff, if there is any dispute about the use of the flat or any utilities therein is to file a suit for partition. It is also open for him to sue the respondent for recovery of any money spent by him on defendant's account. He cannot file a suit for a general direction directing that the defendant shall go on paying the electricity bills or not use the electric power.

4. Learned Judge was right in refusing to grant an injunction. Appeal has no merit and is summarily dismissed.

(D.G. KARNIK, J)